

## Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA

INFO AMEMBASSY JAKARTA

AMEMBASSY LONDON

USMISSION USUN NEW YORK

AMEMBASSY SUVA BY POUCH

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EXDIS

E.O. 11652:XGDS-3

TAGS:PLOS

USUN FOR AMBASSADOR STEVENSON

SUBJECT: LOS: ARCHIPELAGO/STRAITS NEGOTIATIONS WITH

-- PHILIPPINES

REF: (A) MANILA 1991; (B) 1523

1. IT WOULD BE IMPORTANT BREAKTHROUGH IF JUSTICE SECRETARY  
ABAD SANTOS WILLING TO SUPPORT UK ARTICLES ON TRANSIT PASS-  
AGE. IN FACT, SUCH A BREAKTHROUGH WOULD PROBABLY ENABLE  
EARLY CONCLUSION OF ARCHIPELAGO/STRAITS UNDERSTANDING WITH  
PHILIPPINES. WOULD APPRECIATE FULL CONTEXT OF ABAD SANTOS  
DESCRIPTION OF REGIME OF PASSAGE AS ESSENTIALLY A SEMANTIC  
PROBLEM AND BACKGROUND CONCERNING POSSIBLE WILLINGNESS TO  
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ACCEPT UK TRANSIT PASSAGE APPROACH.

2. UK TRANSIT PASSAGE ARTICLES FULLY COORDINATED WITH U.S.  
AND OTHER MEMBERS GROUP OF 5 AND ALTHOUGH THEY CONTAIN SOME

AREAS GIVING U.S. DIFFICULTY ARE CLOSE TO UNIMPEDED TRANSIT AND ARCHIPELAGIC PASSAGE REGIMES U.S. IS SUPPORTING. THEY ARE SO CLOSE IN FACT THAT U.S. SUGGESTED TO INDONESIA THAT PUBLIC INDONESIAN SUPPORT FOR UK TRANSIT PASSAGE ARTICLES WOULD MEET THIRD CONDITION (SUPPORT FOR UNIMPEDED TRANSIT OF STRAITS) IN PROPOSED ARCHIPELAGO/STRAITS UNDERSTANDING.

3. TO ASSIST EFFORT IN CLARIFYING ARCHIPELAGO/STRAITS PROPOSAL I AM SENDING FOLLOWING TEXT INDICATING LATEST U.S. THINKING ON ARCHIPELAGO/STRAITS UNDERSTANDING. WOULD APPRECIATE YOUR GIVING TEXT TO PHILIPPINES AND INFORMING US OF REACTION.

BEGIN TEXT:

OUTLINE OF PROPOSED ARCHIPELAGO-STRAITS UNDERSTANDING

1. GOVERNMENTS PARTY TO THIS UNDERSTANDING WILL SUPPORT AND SEEK TO ENSURE THE INCLUSION IN THE LAW OF THE SEA TREATY OF THE ARCHIPELAGO PRINCIPLE AS FOLLOWS:

(A) THE PRINCIPLE, AS SET FORTH BELOW, MAY BE APPLIED ONLY BY AN ARCHIPELAGIC STATE THAT IS AN INDEPENDENT ISLAND STATE WHOSE COMPONENT ISLANDS AND OTHER NATURAL FEATURES FORM A SINGLE INTRINSIC GEOGRAPHICAL, ECONOMIC AND POLITICAL ENTITY. AN ARCHIPELAGIC STATE MAY DRAW STRAIGHT ARCHIPELAGIC LINES ENCLOSING THE ARCHIPELAGO CONNECTING THE OUTERMOST POINTS OF THE OUTERMOST ISLANDS OF THE ARCHIPELAGO PROVIDED SUCH LINES ENCLOSE THE MAIN ISLANDS AND AN AREA IN WHICH THE LAND-TO-WATER RATIO IS GREATER THAN 1:1 AND LESS THAN 1:9 (COMPUTING WATERS WITHIN ATOLLS AS LAND), AND PROVIDED ANY SUCH LINES DO NOT EXCEED 80 NAUTICAL MILES IN LENGTH, EXCEPT THAT ONE PERCENT OF THE NUMBER OF SUCH LINES USED BY A PARTICULAR STATE MAY BE UP TO 125 NAUTICAL MILES IN LENGTH. FOR PURPOSES OF COMPUTING THE LAND-TO-WATER RATIO, AN ATOLL IS A CHAIN OF LIMESTONE ISLANDS PARTLY CROWNING A RING OF REEF: (1) WHICH  
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IS SUBMERGED OR NEARLY SUBMERGED AT HIGH TIDE; (2) WHICH RISES SHARPLY FROM THE OCEAN FLOOR AND (3) WHICH ENCLOSSES OR NEARLY ENCLOSSES A LAGOON OF SHALLOW WATER. THE FACT THAT A STATE HAS ISLANDS FALLING OUTSIDE THE ARCHIPELAGO UNDER THIS FORMULA SHALL NOT PRECLUDE IT FROM APPLYING THE PRINCIPLE TO THE ARCHIPELAGO.

(B) THE TERRITORIAL SEA, ECONOMIC ZONE, AND CONTINENTAL SHELF JURISDICTION OF AN ARCHIPELAGIC STATE SHALL BE MEASURED FROM THE OUTSIDE PERIMETER OF ARCHIPELAGIC LINES (AS IF SUCH LINES WERE BASELINES FOR MEASURING THE BREADTH OF THE TERRITORIAL SEA).

(C) 1. WATERS WITHIN ARCHIPELAGIC LINES SHALL BE DESIGNATED ARCHIPELAGIC WATERS.

2. SUBJECT TO THE PROVISIONS CONCERNING PASSAGE OF SHIPS AND AIRCRAFT THE ARCHIPELAGO STATE WOULD EXERCISE SOVEREIGNTY OVER THE RESOURCES, WATERS, SEABED, SUBSOIL, AND AIRSPACE ENCLOSED WITHIN THE ARCHIPELAGIC LINES. (D) ALL SHIPS AND AIRCRAFT OF ALL STATES, WITHOUT DISTINCTION, WILL HAVE A RIGHT OF ARCHIPELAGIC PASSAGE THROUGH THE ARCHIPELAGO FROM HIGH SEAS TO HIGH SEAS IN THE NORMAL MODE FOR SUCH VESSELS AND AIRCRAFT (INCLUDING THEREBY SUBMERGED TRANSIT, OVERFLIGHT, AND NORMAL MEASURES ASSOCIATED WITH TRANSIT). ARCHIPELAGIC PASSAGE IS THE EXERCISE OF FREEDOM OF NAVIGATION AND OVERFLIGHT SOLELY FOR THE PURPOSE OF TRANSIT THROUGH THE ARCHIPELAGO, AND MAY NOT BE IMPEDED OR SUBJECT TO NOTIFICATION.

(E) ARCHIPELAGIC PASSAGE COULD BE LIMITED TO SEALANES AND AIR CORRIDORS, NOT NECESSARILY COINCIDENT, RUNNING FROM HIGH SEAS TO HIGH SEAS THAT:

1. INCLUDE ALL NORMAL PASSAGE ROUTES THROUGH ARCHIPELAGIC WATERS, AND WITHIN SUCH ROUTES ALL NORMAL NAVIGATIONAL CHANNELS, PROVIDED THAT DUPLICATION OF EQUALLY SUITABLE ROUTES BETWEEN THE SAME ENTRY AND EXIT POINTS SHALL NOT BE NECESSARY, AND

2. INCLUDE AN AREA WHICH AT ALL POINTS IS NOT LESS THAN  
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THE NARROWER OF:

(I) 80 PERCENT OF THE DISTANCE BETWEEN THE NEAREST POINTS OF LAND ON THE MAIN ISLANDS, (I.E., NOT DRYING ROCKS OR SHOALS), OR

(II) 80 NAUTICAL MILES.

3. THE TREATY WOULD PROVIDE THAT THE AUTHORITY TO DESIGNATE ARCHIPELAGIC SEALANES AND AIR CORRIDORS PURSUANT TO THESE CRITERIA RESTS WITH THE ARCHIPELAGO STATE SUBJECT TO COMPULSORY DISPUTE SETTLEMENT PROCEDURES GENERALLY APPLICABLE TO DISPUTES ARISING UNDER THE LAW OF THE SEA TREATY.

(F) AIRCRAFT ENGAGED IN ARCHIPELAGIC TRANSIT COULD FURTHER BE LIMITED TO AGREED ALTITUDE BLOCKS SPECIFIED IN THE TREATY OR TO AN ALTITUDE ABOVE AN AGREED LEVEL SPECIFIED IN THE TREATY WHICH FOSTER SAFETY OF AIR NAVIGATION AND PROTECT THE RIGHT OF OVERFLIGHT FOR ALL TYPES OF AIRCRAFT.

(G) THE TREATY WOULD PROVIDE THAT SHIPS AND AIRCRAFT IN TRANSIT WOULD BE SUBJECT TO THE FOLLOWING OBLIGATIONS:

1. THAT THEY PROCEED WITHOUT UNREASONABLE DELAY AND NOT ENGAGE IN ACTIVITIES OTHER THAN THOSE NORMALLY INCIDENT TO TRANSIT

2. THAT THEY REFRAIN FROM ANY THREAT OR USE OF FORCE IN

VIOLATION OF THE U.N. CHARTER AGAINST THE TERRITORIAL INTEGRITY OR POLITICAL INDEPENDENCE OF THE ARCHIPELAGIC STATE

3. THAT THEY OBSERVE REASONABLE REGARD FOR OTHER USES OF ARCHIPELAGIC WATERS, INCLUDING RESOURCE USES

4. THAT SHIPS COMPLY WITH INTERNATIONALLY APPROVED TRAFFIC SEPARATION SCHEMES, AND GENERALLY ACCEPTED INTERNATIONAL REGULATIONS, PROCEDURES AND PRACTICES FOR THE SAFETY OF NAVIGATION AT SEA AND FOR THE PREVENTION OF CONTROL OF POLLUTION FROM SHIPS.

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5. THAT CIVIL AIRCRAFT OBSERVE THE RULES OF THE AIR ESTABLISHED BY ICAO AS THEY APPLY TO CIVIL AIRCRAFT OVERFLYING THE HIGH SEAS, AND THAT STATE AIRCRAFT NORMALLY COMPLY WITH SUCH SAFETY MEASURES AND AT ALL TIMES OPERATE WITH DUE REGARD FOR THE SAFETY OF NAVIGATION

(H) VESSELS WOULD ENJOY THE RIGHT OF INNOCENT PASSAGE OUTSIDE ARCHIPELAGIC LANES, PROVIDED THAT THE ARCHIPELAGIC STATE MAY, IN SPECIFIED AREAS OF ARCHIPELAGIC WATERS OUTSIDE SUCH LANES, WHEN NECESSARY FOR THE PROTECTION OF ITS SECURITY AND WITHOUT DISCRIMINATION IN FORM OR IN FACT AMONG FOREIGN SHIPS, SUSPEND TEMPORARILY THE INNOCENT PASSAGE OF FOREIGN SHIPS.

2. GOVERNMENTS PARTY TO THIS UNDERSTANDING WILL SUPPORT AND SEEK TO ENSURE THE INCLUSION IN THE LAW OF THE SEA TREATY OF THE PRINCIPLE OF UNIMPEDED PASSAGE OF STRAITS USED FOR INTERNATIONAL NAVIGATION FOR ALL SHIPS AND AIRCRAFT OF ALL STATES, WITHOUT DISTINCTION. UNIMPEDED PASSAGE IS THE EXERCISE OF FREEDOM OF NAVIGATION (INCLUDING SUBMERGED TRANSIT, OVERFLIGHT, AND NORMAL MEASURES ASSOCIATED WITH TRANSIT) SOLELY FOR THE PURPOSE OF TRANSIT AND MAY NOT BE IMPEDED OR SUBJECT TO NOTIFICATION. THE TREATY WOULD REQUIRE VESSELS IN TRANSIT TO COMPLY WITH APPLICABLE GENERALLY ACCEPTED INTERNATIONAL TRAFFIC SEPARATION AND OTHER SAFETY AND POLLUTION STANDARDS, AND COULD ENVISAGE SPECIAL INTERNATIONALLY APPROVED STANDARDS OF THIS NATURE FOR STRAITS WHERE THERE ARE SPECIAL PROBLEMS. THE TREATY WOULD REQUIRE THAT CIVIL AIRCRAFT IN TRANSIT OBSERVE THE RULES OF THE AIR ESTABLISHED BY ICAO AS THEY APPLY TO CIVIL AIRCRAFT OVERFLYING THE HIGH SEAS, AND THAT STATE AIRCRAFT

NORMALLY RESPECT SUCH RULES AND AT ALL TIMES OPERATE WITH DUE REGARD FOR THE SAFETY OF NAVIGATION. OUTSIDE STRAITS USED FOR INTERNATIONAL NAVIGATION, THE REGIME OF INNOCENT PASSAGE WOULD APPLY IN THE MAXIMUM 12-MILE TERRITORIAL SEA.

3. MODALITIES FOR INITIAL EXPRESSION OF SUCH SUPPORT AT AN EARLY STAGE OF THE GENEVA SESSION OF THE LAW OF THE SEA CONFERENCE WILL BE AGREED BY THE CONCERNED DELEGATIONS, AND THEY WILL CONSULT UPON ARRIVAL AT GENEVA ON PRECISE  
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TREATY TEXTS GIVING EXPRESSION TO THEIR AGREEMENT.

4. IT IS UNDERSTOOD THAT THE ARCHIPELAGIC STATES PARTY TO THIS UNDERSTANDING WILL MAKE ARRANGEMENTS TO BE REFLECTED IN THE TREATY FOR THE PROTECTION OF CABLES, THAT THEY WILL SUPPORT A 200-MILE ECONOMIC ZONE FOR ALL ISLANDS, AND THAT THEY WILL CONSULT WITH CONCERNED STATES WITH A VIEW TO APPROPRIATE RESOLUTION CONCERNING AFFECTED FISHING INTERESTS.

5. IT IS UNDERSTOOD THAT THE POINTS COVERED HEREIN WOULD RELATE ONLY TO THE CONTENTS, ON THE SUBJECTS INVOLVED, OF A NEW GENERALLY ACCEPTABLE INTERNATIONAL CONVENTION ON THE LAW OF THE SEA, AND DO NOT CONSTITUTE A SEPARATE AGREEMENT AND ARE WITHOUT PREJUDICE TO THE POSITIONS OF THE RESPECTIVE GOVERNMENTS IN THE ABSENCE OF SUCH A CONVENTION.

6. THIS DOCUMENT WILL NOT BE DISTRIBUTED OUTSIDE THE RELEVANT AUTHORITIES OF THE GOVERNMENTS CONCERNED EXCEPT AS AGREED. OUTSIDE DISCUSSION OF THE NATURE OF THE UNDERSTANDING WILL BE AS AGREED. END QTE.

4. UNDER SEPARATE COVER DEPT POUCHING COPY OF UK ARTICLES ON TRANSIT PASSAGE.

5. WOULD APPRECIATE YOUR REACTIONS ON HOW TO CONTINUE TO BRING GOP ALONG AND ON DESIRABILITY OF SCHEDULING WITH GOP NOW AN EARLY MEETING IN GENEVA TO DISCUSS ARCHIPALAGO/ STRAITS UNDERSTANDING.

KISSINGER

NOTE BY OC/T: POUCHED SUVA.

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<< END OF DOCUMENT >>

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